IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2718 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GHODASARA C JETHALAL

Versus

JAMJODHPUR NAGAR PANCHAYAT

Appearance:

MR VIMAL M PATEL for Petitioner No. 1

MS KJ BRAHMBHATT for Respondents No. 1-2

GOVERNMENT PLEADER for Respondent No. 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 06/12/2001

ORAL JUDGEMENT

1 The petitioner, who was working as night watchman cum gardener since 1983 with respondent No.2-School, which is run by the Nagar Panchayat, has sought the following reliefs :

"(A) That your lordship be pleased to issue an order or direction or writ in the nature of mandamus and/or certiorary and/or any other appropriate writ, order or direction declaring the impugned action on the part of the respondent no.1 and 2 to rotate the petitioner as fix wage employee since 1983 and deprive him of the benefits available to regular employee, as unfair labour practice and direct the respondent no.1 & 2 to regularise the services of the petitioner from the initial date of appointment and to grant him all the consequential benefits.

(B) Be pleased to declare the action on the part of the respondent no.1 to pay less wages than payable to the regular employees performing the duties of Watchman/Gardner as discriminatory and violative of Art.14 and 16 of the Constitution of India.

(C) Be pleased to declare the non-implementation of the provisions of Minimum Wages Act amounts to forced labour and the employees are entitled the benefits of weekly off and arrears of wages with 12% interest.

(D) Your Lordship be pleased to declare the action of the Nagar Panchayat non-payment of minimum wages to the petitioner is forced labour and direct the panchayat to pay overtime wages for working more than 8 hours to the petitioner from initial date of appointment with 12% interest and further direct the panchayat to implement the provisions of Minimum Wages Act and grant all the benefits to the petitioner.

(E) Be pleased to declare that the respondent no.3 has failed to perform his statutory duties and further direct him to file the prosecutions against the respondent no.1 & 2 for violation of the provisions of Minimum Wages Act and Labour legislation as mentioned in the petition".

2 On 26/03/1990 a notice was issued pending admission and respondent Nos. 1 and 2 were restrained from terminating the services of the petitioner. Rule was issued on 25/4/1990 and it was directed that ad-interim relief granted earlier shall continue. Thereafter, on 19/8/1991 the Court passed the following order modifying the ad-interim relief.

"We have heard the learned advocate for the parties on interim relief. At the out-set we may mention one grievance made by the learned counsel for the petitioner. He has stated that despite interim relief operating since 26th March,1990, from May 1990 uptil now his wages as gardener and watchman have not been paid to the petitioner. Miss.Shah appearing for the respondent submitted that during the pendency of this petition, the management had decided not to take actual work from the petitioner as such, but the management had no objection in paying his wages as fixed in his appointment order and as revised from time to time which would be Rs.250/p.m. The said amount has not been paid because the petitioner has not submitted written request to the management to release amount for the work done by him, especially when he was making such applications every month earlier. In our view such written applications are not required to be insisted upon by the management, which is a public body. All that is required to be done is that his arrears of remuneration from May 1990 to July,1991 may be paid to the petitioner on the petitioner signing voucher or vouchers, which signatures would be on stamped receipts for having received the amounts. The respondents in that connection may prepare a consolidated voucher or separate vouchers as found convenient, covering entire period from May 1990 to July,1991 and on taking petitioner's signature on stamp receipt below this/these voucher/vouchers, all the arrears of remuneration as aforesaid at legally permissible rates shall be paid to the petitioner on or before 10th September 1991. Thereafter, every succeeding calendar month, the remuneration payable to the petitioner shall be paid on or before 10th of succeeding month regularly on the petitioner signing the voucher as the stamped receipt from time to time. The respondents are directed accordingly. S.O. to 3rd September,1991 for further orders.

August 19,1991. Sd/- Sd/-
(S.B.Majmudar,J) (M.S.Parikh,J)"

3 It appears that the petitioner moved the Court for modifying ad-interim relief granted and sought interim relief. The Court on 19/11/1992 passed the following order :

"Heard the learned Counsel for the petitioner as regards interim relief. Having regard to the overall facts and circumstances of the case, ad-interim relief granted earlier is ordered to be continued till further orders. Learned Counsel for the petitioner contends that at this stage the respondent-Panchayat should be directed to pay wages as per the rates prescribed under the Minimum Wages Act. In our opinion, it would not be proper to grant this interim relief at this stage. In view of the Supreme Court decisions rendered in the cases of (1) State of Haryana & Ors. Vs. Piara Singh & Ors. reported in Judgment Today 1992(5) SC 179, and (2) Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi & Ors., reported in Judgement Today 1992(1) SC 394, the petition itself may not be maintainable. However, the petition has already been admitted. Therefore, in the facts of the case we would not like to disturb the ad-interim relief granted earlier. But at the same time it would not be proper to grant further interim relief. Hence, ad-interim relief granted earlier, is ordered to be continued till further orders.

Sd/-
(A.P.Ravani,J)

Sd/-
(J.M.Panchal,J)"

4 Mr.Vimal M.Patel appears for the petitioner. Ms.K.J.Brahmbhatt appears for respondent Nos. 1 and 2. It was submitted by Mr.Patel that the petitioner was asked by respondent No.2 to report for work by communication dated 1/7/1998. However, in view of the aforesaid orders dated 19/8/1991 and 19/11/1992 passed by this Court it appears that the petitioner under mistaken notion did not report for duty as called by respondent Nos. 1 and 2. Ms.Brahmbhatt states that the petitioner collected last pay in terms of the interim order on 29/10/1998 and thereafter the petitioner has not even

approached to collect the wages as required in terms of the interim order.

5 Mr.Patel states that the petitioner is ready and willing to make a representation and report for duty and the respondents be directed to consider his case sympathetically in light of the interim orders of this Court. Mr.Patel further states that the petitioner would not insist for minimum wages in light of the statement made by Ms.Brahmbhatt that respondent-panchayat is not getting grant in relation to post on which the petitioner was working, as the said post is not a sanctioned post.

6 In light of the submissions and the statements made by both the sides the cause of justice would be served if the petitioner is directed to make a representation to the respondent authorities viz. respondent Nos. 1 and 2, to absorb him back on the post on which he was working and on receiving such representation the respondent Nos. 1 and 2 shall sympathetically consider the same and reinstate him on the post on which he was working at the point of time when this petition came to be filed with a stipulation that the respondents shall not be required to make payment of wages more than the amount which has already been ordered by the interim order dated 19/8/1991 i.e. Rs.250/- p.m. The petitioner shall make a representation with the respondent authorities within three weeks from the date of the receipt of the certified copy of the order and/or a writ, whichever is earlier, and in case he fails to do so it will not be necessary for the respondents to consider the representation, if any, made thereafter. It will be open to the respondents to pay wages at a higher figure in case the respondents are inclined to do so and the order or direction of this Court shall not come in their way. The representation made by the petitioner shall be decided upon in a positive manner within a period of two weeks from the date of the receipt of the certified copy of the order (and/or a writ, whichever is earlier). The petition is disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

(D.A.Mehta,J)

m.m.bhatt